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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

9 JULIO CESAR NAVAS,

10 *Petitioner,*

3:10-cv-00647-ECR-WGC

11 vs.

ORDER

13 JAMES BACA, *et al.*

14 *Respondents.*

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16 This habeas matter under 28 U.S.C. § 2254 comes before the Court for initial review
17 of the counseled amended petition under Rule 4 of the Rules Governing Section 2254 Cases.

18 Petitioner acknowledges that certain claims in the amended petition are not yet
19 exhausted and that proceedings on petitioner's state post-conviction petition remain pending.
20 In the overall scheme of the state and federal litigation, it perhaps would be most efficient at
21 this juncture to suss out any additional issues that respondents might have as to exhaustion
22 of the remaining allegedly exhausted claims in the petition while state proceedings still are
23 pending. The Court accordingly will direct the filing of a motion to dismiss restricted to
24 exhaustion issues only. In this vein, if part of petitioner's response will be to request a stay,
25 petitioner must do so in a separate motion for that relief separate and apart from the
26 opposition to the motion to dismiss.

27 IT THEREFORE IS ORDERED that, within **forty-five (45)** days of entry of this order,
28 respondents shall file a motion to dismiss restricted to exhaustion issues only. All other

1 issues in the case, including other procedural defenses, are deferred at this time. The failure
2 to present other defenses in the initial motion to dismiss filed in response to this order shall
3 not provide a basis for waiver of defenses, as the Court expressly is limiting the response to
4 only issues of exhaustion.

5 IT FURTHER IS ORDERED that briefing will proceed on the motion to dismiss and any
6 motion for a stay filed thereafter as per the standard schedule for same under the local rules.

7 IT FURTHER IS ORDERED that any request for a stay to exhaust the unexhausted
8 claims must be sought by a separate motion separate and apart from any opposition to the
9 motion to dismiss. Any such motion for a stay shall be filed by the due date for the opposition
10 to the motion to dismiss.

11 DATED: May 30, 2012.

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15 EDWARD C. REED
16 United States District Judge
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